BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C. 20554

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| In the Matter of | ) | |
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| Assessment and Collection | ) | MD Docket No. 95-3 |
| of Regulatory Fees for | ) | |
| Fiscal Year 1995 | ) | |

To: The Commission

## COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION

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To: The Commission

## COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION

Columbia Communications Corporation ("Columbia"), by its attorneys and pursuant to Section 1.415(a) of the Commission's Rules, hereby submits its comments in the above-captioned proceeding, Assessment and Collection of Regulatory Fees for Fiscal Year 1995, FCC 95-14 (released January 12, 1995) ("NPRM"). Specifically, Columbia addresses the Commission's calculation and assessment of fees pertaining to geosynchronous satellite space stations. Columbia believes that the Commission's approach requires substantial modification.

As the Commission is aware, Columbia is authorized to operate C-band transponders on the National Aeronautics and Space Administration ("NASA") Tracking and Data Relay Satellite System ("TDRSS") satellites at 41° West Longitude and 174° West Longitude. Although Columbia only leases transponders on these two satellites pursuant to its agreement with NASA, it actually

holds two FCC authorizations, as if Columbia itself operated two satellites (File Nos. CSS-90-110 and CSS-90-111).

## Summary

In its NPRM, the Commission allocated $4,978,750 for its revenue requirements for regulation of geosynchronous space stations ("Space Stations") and calculated a fee of $142,250 per operational Space Station, an increase of nearly 120% over the fee for 1994. Columbia believes this fee is unjustified and excessive. First, the Commission has not explained how it allocated the revenue requirements projected for regulatory activities among the various services encompassed under the Commission's "Common Carrier" category, which includes Space Stations. In addition, in determining the regulatory revenue requirements allocated to Space Stations, the Commission appears to have failed to consider the substantial regulatory activities, such as international coordinations and consultations, the costs of which are already explicitly recovered by payment of application fees.

Second, the Commission's current formulation for regulatory fee payments appears to have created a discrepancy upon which COMSAT Corporation ("COMSAT") has relied to avoid paying its fair share of regulatory fees for its ownership and

operational interest in INTELSAT and INMARSAT Space Stations and its use of these satellites. COMSAT is required to pay application fees in association with its use of INTELSAT and INMARSAT facilities and there is nothing in Section 9 of the Communications Act to suggest that COMSAT should not similarly pay its fair share of regulatory fees.

Finally, Columbia itself is uniquely and unfairly burdened by the Commission's allocation of Space Station regulatory fees on a per license basis. Although Columbia holds two FCC authorizations, as if it operated two full satellites, its lease agreement with NASA permits it to use only twelve C-band transponders on each TDRSS satellite -- half of each Space Station's C-band capacity of 24 transponders, the minimum number of Space Station transponders required by the Commission. In addition, this number is substantially less than half the number of transponders on board many other commercial satellites, which carry hybrid payloads utilizing multiple frequency bands and having a capacity many times larger than the Columbia/TDRSS payloads. It is extremely inequitable that Columbia, an entrepreneurial start-up company, will be required to pay the same regulatory fee that is paid by such Space Station operators, even though it operates a mere fraction of the transponder capacity of a typical geosynchronous satellite.

## Discussion

### I. THE COMMISSION'S REGULATORY FEE ALLOCATION IS NOT ADEQUATELY JUSTIFIED AND IS EXCESSIVE.

In its NPRM, the Commission allocated $57,000,000 in regulatory fees to cover its revenue requirements for all "Common Carrier" Services. NPRM, FCC 94-15, slip. op. at ¶ 10. Next, the Commission determined that $4,978,750 should be allocated to Space Station regulation. Id. at ¶ 52.[1/] Columbia believes that this amount is not representative of the Commission's expenses associated with the enforcement policy, rulemaking, international activities, and user information services applicable to Space Station regulation.

First, the Commission's regulatory allocation for Space Stations does not appear to take into account the significant application fees paid by Space Station operators, or the Commission services that are covered by those fees. On August 17, 1990, Columbia filed a request for declaratory ruling and fee refund asking that the Commission refund Columbia's application fees associated with its lease of transponder capacity the two TDRSS satellites. See Application of Columbia Communications

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1/ Although the Commission claims it allocated to Space Stations a pro rata portion of the $57,000,000 allocated for Common Carrier Services, the NPRM does not explain in sufficient detail how the Commission determined the share allocated to Space Stations. See NPRM, FCC 95-14, slip op. at ¶ 12, 52; Appendix G.

Corporation for Authority to Use and Offer for Lease the C-Band Transponders on NASA TDRSS satellites, Request for Declaratory Ruling and Fee Refund (filed August 17, 1990). Columbia argued that because the two satellites are already constructed, launched and operated by NASA, Columbia's lease of the TDRSS satellites C-band transponders should not require Columbia to pay fees applicable to an application to construct or an application to launch and operate the Space Stations.

In rejecting Columbia's request, the Commission stated that the application fee required to construct a Space Station covers the cost of examining the applicant's qualifications, the technical parameters of the station, and whether the public interest would be served by the provision of the proposed service. See Letter to Raul R. Rodriguez, Counsel for Columbia, from Andrew S. Fishel, Managing Director, Federal Communications Commission, dated October 1, 1990, ("Columbia Letter") (attached hereto as Exhibit 1). Similarly, the Commission explained that launch and operational authority fees are used to pay for the consultation and coordination of a proposed station's operation at assigned frequencies and at a given orbital location. Id. at 3-5. As these services provided by the Commission are paid for by licensees' application fees, the amount of regulatory fees proposed to be paid for Space Stations should be reduced so that

they do not include the cost of services covered by the Commission's substantial application fees.

## II. COLUMBIA SHOULD NOT BE REQUIRED TO PAY FOR THE COMMISSION'S ACTIVITIES INVOLVING INTELSAT, INMARSAT, OR COMSAT.

Columbia believes that COMSAT must participate equally and in proportion to its use of the Commission's resources in helping the Commission to recover its regulatory costs. The Commission itself has recognized that COMSAT should pay its way. For example, in establishing application fees for authority to construct, launch, and operate Space Stations, the Commission explicitly ruled that COMSAT must pay for its participation in INTELSAT and INMARSAT systems:

> For space stations operating in the INTELSAT and INMARSAT system, COMSAT must seek authority to participate in the construction, or in the launch and operation, of such a station. The fees discussed herein will be required for all such authorizations . . . . We will also charge this fee to COMSAT for requests to participate in the launch of space stations within the INTELSAT and INMARSAT systems.

Establishment of a Fee Collection Programmed to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 987 nn.226, 227 (1986). Nevertheless, the Commission has created an ambiguity in its regulatory fee system, which narrowly bases payment of Space Station fees on

Section 25.120(d) of the Commission's rules. See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, 9 FCC Rcd 5333, 5400 (1994) ("Regulatory Fees Order"). COMSAT has apparently seized on this Section's focus upon Space Station "licenses" to conclude that it owes no fees to the FCC, despite the agency's extensive involvement in domestic oversight and international coordination activities in COMSAT's behalf.[2/] The effect of such a limitation, if left unchallenged, would be to require Columbia, and other similarly situated satellite operators, to defray the Commission's enormous costs associated with its oversight of COMSAT's participation in INTELSAT and INMARSAT, in effect, subsidizing COMSAT. This conclusion is outrageous, discriminatory, and fundamentally contrary to the law permitting the FCC to collect fees from the entities it regulates.

Neither Section 9 of the Communications Act nor the legislative history relating to its enactment permit the Commission to treat COMSAT differently with respect to regulatory fees than the Commission has treated COMSAT with respect to application fees. Section 9 of the Communications Act clearly

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2/ Recent inquiries by Columbia at the Commission confirm that COMSAT did not pay regulatory fees for fiscal year 1994 for its participation in INTELSAT and INMARSAT Space Station activities.

requires that the Commission recoup costs for all Commission regulatory activities undertaken pursuant to Part 25 of its rules, which encompasses oversight of COMSAT's participation in INTELSAT and INMARSAT. See 47 U.S.C. § 159(g) (establishing a fee for "Space Station (per operational station in geosynchronous orbit) (47 C.F.R. Part 25)") (emphasis added).

Part 25 of the Commission's rules, in turn, was promulgated pursuant to Section 201(c)(11) of the Communications Satellite Act of 1962 (47 U.S.C. § 702 et seq.) and Section 501(c)(6) of the International Maritime Satellite Telecommunications Act (47 U.S.C. § 751 et seq.), as well as Titles I-III of the Communications Act of 1934. See 47 C.F.R. § 25.101(a) (1993). Indeed, Part 25 represents the only codification of regulations pursuant to the Commission's authority under the Communications Satellite Act, which authorized the creation of COMSAT, and COMSAT's participation in the INTELSAT and INMARSAT systems is explicitly regulated by this section. See 47 C.F.R. § 25.110(b)(1) (1993) (requiring COMSAT to apply and pay for the applications relating to its participation in the INTELSAT and INMARSAT systems).

Accordingly, the Commission should adjust its number of payees to account for COMSAT's participation in INMARSAT and INTELSAT activities and adjust its per Space Station fee

accordingly. As a result of the possible exclusion of COMSAT's participation in INTELSAT and INMARSAT satellites, the Commission has apparently inaccurately estimated payment units at just thirty-five operational Space Stations. See NPRM, FCC 95-14, slip op. at ¶ 52.

Even assuming that each operational Space Station satellite is a reasonable and appropriate payee unit,[3/] the Commission's proposal results in Columbia and all other U.S. domestic and international satellite licenses being required to pay significantly more in regulatory fees than they should. According to the Commission, thirty-four satellites have completed international consultation pursuant to Articles XIV(c) and (d) of the INTELSAT Agreement. See Public Notice, "International Fixed Satellite Service; INTELSAT, Transborder and Separate Systems," Report IS-0055, Attachment I (dated February 7, 1995). Adding to these thirty-four satellites, the two satellites operated by Columbia (assuming arguendo that Columbia should count as two satellites), two satellites operated by PanAmSat, one Space Station operated by Orion, and COMSAT's participation in the four Space Stations operated by INMARSAT and approximately nineteen satellites operated by INTELSAT, the

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3/ See Section III.

appropriate number of payee units should be sixty-two. Id. at Attachment 3.

## III. THE COMMISSION'S REGULATORY FEES SHOULD BE BASED ON THE OPERATIONAL TRANSPONDER CAPACITY ACTUALLY USED FCC LICENSEES.

As a final matter, Columbia believes that the Commission should not base its fee calculations on the number of authorized satellites alone, and should take into account each Space Station licensee's actual transponder capacity in determining the proper fee owed.[4/] Under any regulatory fee schedule that truly reflects the capacity of a licensee, Columbia would be required to pay a reduced fee consistent with its limited number of transponders.[5/]

The Commission's proposal to allocate regulatory fees on a per Space Station basis does not rationally reflect the vast differences in transponder and bandwidth capacity actually under the control of U.S. licensees. For example, Columbia's capacity on each of the TDRSS satellites is limited to just twelve C-band

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4/ Under Section 9 of the Communications Act, the Commission is empowered to add, delete or reclassify services in the schedule included in that Section. 47 U.S.C. § 159(b)(3).

5/ On August 19, 1994, in connection with its first installment payment of $65,000 for 1994 regulatory fees, Columbia filed a request for reduction of its fees for fiscal year 1994. In September 1994, Columbia renewed this request in conjunction with its second installment payment of $65,000. The Commission has yet to act on Columbia's request.

transponders, or half of the complement of twenty-four C-band transponders ordinarily required by the Commission's full frequency reuse policy. See Licensing of Space Stations in the Domestic Fixed Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, 54 R.R.2d 577, 598 n.67 (1983), recon. granted in part, 99 F.C.C.2d 737 (1985). Moreover, many Space Stations carry full arrays of both C-band and Ku-band transponders with full frequency reuse in each band, totalling up to forty-eight fully operational transponders and vastly more capacity.[6/] If Space Station regulatory fees are not reduced to reflect actual capacity,[7/] Columbia will be burdened by the imposition of regulatory fees at up to four times the rate per unit of capacity applicable to the ordinary provider of Space Station capacity.[8/] On the other hand, by adjusting statutory fees required to be paid to a level commensurate with actual

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6/ Columbia notes in this regard that the Commission's rules (§§ 25.210(e)(1) and (2)) for international satellite systems require four-fold frequency reuse (2 times spatial and 2 times polarization). As a result, Columbia has only one quarter of the capacity of a satellite of this type.

7/ For example, by basing fees upon the number of operational 36 MHz equivalent circuits.

8/ The per-transponder charge that Columbia passes along to its customers would be as much as four times the amount of the pass-along for satellite operators with full complements of C-band and Ku-band transponders. This disparity will have a direct and immediate impact on the competitiveness of the rates Columbia can offer and the profitability of its venture.

capacity, the Commission will promote regulatory parity and foster the Commission's policy favoring intramodal competition.

Similarly, subjecting Columbia to fees on a per Space Station basis would single out a small company for payment of fees disproportionately greater than those paid by other, much larger and well-established satellite companies that own and operate geostationary satellites, thereby reducing Columbia's ability to compete effectively in the satellite market. The effect on Columbia's ability to compete is exacerbated by the fact that Columbia must compete in a market that is dominated by COMSAT, a large, monopolistic entity that, up to now, has not paid Space Station regulatory fees to the United States Government. See Section II.

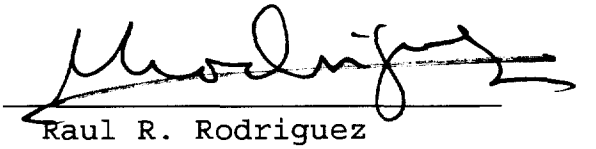
Finally, the current trend in satellite technology is towards smaller, more streamlined satellite with more specialized functions, rather than all-purpose spacecraft. The Commission's per Space Station regulatory fee proposal would discourage the development of these smaller, more efficient spacecraft.

## Conclusion

For the reasons outlined above, Columbia respectfully requests the Commission to reduce the fees listed in Section 1.1154 by any amount that includes services covered by application fees; adjust the regulatory fees to include COMSAT's participation in INTELSAT and INMARSAT and require COMSAT to pay its fair share; and require Space Station licensee to pay regulatory fees that are based upon system capacity rather than the number of stations, regardless of size.

Respectfully submitted,

COLUMBIA COMMUNICATIONS
CORPORATION

By: 

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# EXHIBIT 1

FEDERAL COMMUNICATIONS COMMISSION
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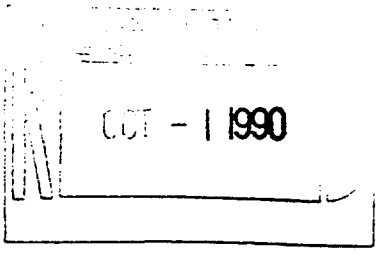
OFFICE OF
MANAGING DIRECTOR

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Re: Columbia Communications Corporation

Dear Mr. Rodriguez:

This is in reference to the Request for Declaratory Ruling and Fee Refund filed on behalf of Columbia Communications Corporation, an applicant for Commission authority to use C-Band transponders on two National Aeronautics and Space Administration (NASA) Tracking and Data Relay Satellite System (TDRSS) satellites. The staff determined that the Columbia applications should be subject to fees in the amount of $144,060, consisting of $2,030 each for the applications to construct the satellites and $70,000 each for the applications to launch and operate the satellites. See 47 C.F.R. §§ 1.1105(16)(a) & (b). Columbia requests a ruling that neither the "construction" nor "launch" fees are applicable, and it seeks a refund of the $4,060 in construction fees paid with the submission of its applications.

Columbia argues that its applications are not of the type included in the Commission's Schedule of Fees, and they are therefore not subject to any fee. Rather, the applicant has entered into a long-term lease with NASA for the use of the C-Band transponders on these TDRSS satellites. Because both satellites have already been constructed and launched by NASA, Columbia contends that it should not be required to pay fees associated with applications for authority to construct space stations or applications for authority to launch space stations. Moreover, NASA will continue to perform the tracking, telemetry and control (TT&C) functions of the space stations. Thus, Columbia argues that, because it will neither construct, launch nor operate the space stations, a reasonable reading of the fee schedule requires a determination that no fee would be applicable for these applications.

Columbia also asserts that the authorization of these satellites should not be subject to a fee because the satellites were previously authorized by the Commission. The applicant points out that the Commission's prior action specifically approved the technical parameters of the satellites, and their orbital locations have already been assigned to NASA. Columbia concludes that it would be unfair to charge it a processing fee where the processing had already taken place in connection with the earlier authorization of these space stations. The applicant also argues that, if Columbia is required to pay these fees, the Commission might be in a position to unfairly collect the fees again from a subsequent lessee of these same TDRSS satellites. In this regard, the applicant notes that, at the conclusion of its six year lease with NASA, another party may obtain a similar lease, and that party would be in the same position as Columbia with respect to its request for Commission authority and the payment of fees.

In the event that the Commission determines that these applications would ordinarily require payment of $144,060 in fees, Columbia requests a waiver of those fees in this case. It argues that a fee waiver would further the national policy of establishing separate international satellite systems because the fee is a potential financial barrier to a small company attempting to enter the field. It also notes that the potential financial barrier created by the fee threatens Columbia's contract with NASA, a contract that promises to pay $60 million into the Treasury of the United States over the next six years.

In the alternative, the applicant asserts that a partial fee waiver is warranted. Columbia argues that the INTELSAT consultation process does not justify the $140,000 in "launch" fees in this case. The applicant asserts that the consultation process is often conducted as part of the construction phase, and it may be completed before an application for "launch" authority is even filed. Moreover, Columbia notes that the Commission has indicated that it is increasingly relying on applicants to carry the burden of the international satellite consultation and coordination process. In these circumstances, Columbia suggests that $4,060 in "construction" fees already paid with its applications would cover the Commission's reasonable processing costs.

We note that the Commission has previously determined that the initial authorization of the commercial transponders on the TDRSS satellites had become "null and void," and an application to use those transponders was "treated as a request for new radio station authorizations." See Systematics General Corporation, 103 FCC 2d 879 n.1 (1985). Columbia argues that the treatment of the Systematics General application should not control the treatment of its application because the space station under consideration

in that case had not been launched. The applicant also points out that the Commission's determination in Systematics General did not consider the fee consequences of the classification of the application as one for a new radio station authorization. However, we do not see how either the launch status or the fee consequences of the classification change the fact that the original TDRSS authorizations have lapsed by virtue of the reformation of the TDRSS contract. Although the facilities which Columbia seeks to use are in place and presumably ready to be turned on, there is no outstanding authorization under which these commercial transponders could be operated. Thus, before Columbia can use the transponders under its lease with NASA, the Commission must grant it authority to do so, and Columbia's filings constitute applications for such radio station authorizations. Indeed, it is only by treating Columbia's applications as requests for radio station authorizations that the Commission could grant Columbia what it has requested, the authority to operate the transponders.

The Commission uses two analyses in authorizing space stations. As an initial matter, the Commission considers the applicant's request for authority to "construct" a station. In reviewing that request, the Commission considers the applicant's qualifications, as well as the technical parameters of the station, and whether the public interest would be served by the provision of the proposed service. The fact an applicant wants to operate a satellite that has been constructed has no bearing on that review. For example, in Systematics General, supra, the applicant proposed to use a satellite that was initially constructed for someone else, but the request was treated as an application to "construct" a new space station.

The second aspect of the space station authorization process is initiated by an application for authority to launch and operate the station. These requests involve consultation and coordination of the proposed station's operation of assigned frequencies at a given orbital location and its technical parameters. The grant of "launch and operational" authority is a license to operate radio facilities under Title III of the Communications Act. Columbia has suggested that it will not "operate" the stations because NASA will provide TT&C services for the satellite. However, Columbia, not NASA, will be responsible for operating the commercial transponders on these stations, and it is Columbia that will be responsible for ceasing transmissions on these frequencies in the event harmful electrical interference occurs.

We do not believe that Columbia's status as a lessee of NASA changes this analysis. The applicant's six year lease will, most likely, result in its use of these transponders during most, if not all, of their remaining life. If it appears that there will be some

additional life to these satellites after 1996, and if some other party successfully bids for that capacity, Columbia would be in a position to assign its authorization to that party. If Columbia's authorization should become null and void, any new party seeking authorizations for these satellites would be treated as an applicant for new authorizations, in the same manner as the Columbia applications now before the Commission.

Just as "construction" authority is usually sought before a satellite is built, "launch and operation" authority is generally requested before a satellite is placed in orbit, but the fact that a space station is already in orbit has no bearing on that process. Where an in-orbit space station has no valid authorization under which specific frequencies can be operated at a given orbital location, an application to activate those frequencies on that station would be treated as an application to launch and operate a new space station for both processing and fee purposes.

Columbia argues that the Commission's earlier authorization of the TDRSS satellites warrants an exemption from or a waiver of all or part of the fees because the Commission has already done much of the work associated with the processing of its applications. However, the mere fact that the processing of a particular application requires fewer staff resources than the average for such applications would not justify a fee adjustment. Nevertheless, considering Columbia's assertions in this regard, we note that the earlier authorizations of these space stations would not necessarily reduce the staff resources devoted to Columbia's request. The original authorizations were issued to a different entity and were for domestic satellite service. Columbia is a new applicant for these stations, and it seeks to provide international service. Thus, the authorization process described above begins anew. Further, there are new circumstances to consider in the process of staff review as well as the consultation and coordination of the satellites. For example, Columbia has requested a waiver of the Commission's full frequency re-use requirement for separate systems, and INTELSAT has proposed an international satellite to be located in an orbital position only 0.5° away from the TDRSS satellite at 41° West Longitude. Thus, the earlier, lapsed authorizations of these satellites provide no basis on which to justify a fee adjustment.

Further, it does not appear that a waiver of the launch and operational authority fee is justified in this case. That fee was established by Congress on the basis of the average cost to the Commission in the consultation and coordination process, taking into account the fact that the consultation and coordination process requires the devotion of substantial Commission resources, even though applicants also participate in the process. While Columbia

argues that staff resources may be devoted to the consultation and coordination process during the space station construction phase, that does not indicate that the staff believes that the construction fee adequately compensates the Commission for any or all of the consultation and coordination process. Rather, it simply reflects the staff's desire to move the ultimate authorization of the new space station along as expeditiously as possible. In this case, and for new space stations authorizations generally, the launch fee reasonably reflects the staff efforts devoted to the consultation and coordination process.

With regard to Columbia's request for a fee waiver as a means to promote the separate system policy, we note that all applications granted by the Commission will, in some way, serve the public interest, convenience and necessity. Thus, the Commission has generally refrained from granting fee waivers based on the alleged merits of the underlying application. See One Hundred and One Broadcasting, 3 FCC Rcd 4353 (1988). Accordingly, a fee waiver is not warranted on the basis of Columbia's proposal to provide a service consistent with Commission policy. Nor do we believe that Columbia's status as a lessee of NASA justifies either a fee exemption or a fee waiver. Columbia has not alleged that it lacks the financial capacity to pay the $144,060 in fees, and it does not appear that the imposition of the fees will significantly jeopardize the applicant's ability to fulfill its financial responsibilities under its lease with NASA.

Accordingly, Columbia's request for a fee waiver is denied. The fee for the processing of Columbia's applications to use the commercial capacity of the two TDRSS satellites pursuant to its lease with NASA is $144,060. Columbia has already paid $4,060 with the filing of its applications, but, as those applications request both construction and launch authority, the remainder of $140,000 should be paid within thirty days of the date of this letter. This can be accomplished by filing the fee payment, together with an appropriately completed FCC Form 155 with the Mellon Bank in the manner prescribed in 47 C.F.R. § 1.1105(16)(b).

Sincerely,

Andrew S. Fishel
Managing Director